

Response Deadline (extended with consent of the Plan Administrator):  
January 25, 2013 at 4:00 p.m. (Eastern time)

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**LEHMAN BROTHERS HOLDINGS INC., et al.,  
  
Debtors.**

**Chapter 11**

**Case No. 08-13555 (JMP)**

**(Jointly Administered)**

**RESPONSE OF ANDORRA BANC AGRICOL REIG, S. A. TO THE  
THREE HUNDRED SEVENTY-EIGHTH OMNIBUS OBJECTION  
TO CLAIMS (NO LIABILITY CLAIMS)**

Andorra Banc Agricol REIG, S. A. ("Andbanc"), by and through its undersigned counsel, files this response (the "Response") to the Three Hundred Seventy-Eighth Omnibus Objection to Claims (No Liability Claims) [Docket No. 32651] (the "Objection") filed by Lehman Brothers Holdings Inc., as Plan Administrator ("Plan Administrator") under the Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and Its Affiliated Debtors, with respect to the portion of the claims held by Andbanc to which the Objection relates (the "Claim"), and respectfully states as follows:

### **BACKGROUND**

1. Beginning on September 15, 2008 (the "Petition Date") and periodically thereafter, Lehman Brothers Holdings Inc. ("LBHI") and certain of its affiliated debtors (together with LBHI, the "Debtors") filed with this Court voluntary petitions for relief pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. On or about November 2, 2009 Andbanc timely filed a proof of claim against the Debtors, which was assigned proof of claim no. 63849 (the "Proof of Claim"), in accordance with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, this Court's Order Pursuant to Section 502(b)(9) of the Bankruptcy Code and Bankruptcy Rule 3003(c)(3) Establishing the Deadline for Filing Proofs of Claim, Approving the Form and Manner of Notice Thereof and Approving the Proof of Claim Form, dated July 2, 2009 [Docket No. 4271] and the Notice of Deadlines for Filing Proofs of Claim Based on Lehman Programs Securities dated July 27, 2009.

3. On December 7, 2012, the Plan Administrator filed the Objection with respect to, *inter alia*, the securities identified by International Securities Identification Number ("ISIN") XS0229269856 listed on Attachment 1 to Andbanc's Proof of Claim (the "Securities").

4. The Securities were issued by Lehman Brothers UK Capital Funding II L.P. and were guaranteed by Lehman Brothers Holdings plc ("LBH plc"), a non-debtor subsidiary of LBHI (the "LBH plc Guarantee"). Objection, ¶ 10.

5. On June 9, 2005, the Executive Committee of the Board of Directors of LBHI adopted a resolution by unanimous written consent providing for the full guarantee by LBHI of the payment of all liabilities of LBH plc (the "Guarantee Resolution"). The Guarantee Resolution, a copy of which is attached hereto as Exhibit A, states that "[t]he Corporation



[LBHI] hereby fully guarantees the payment of all liabilities, obligations and commitments of the subsidiaries set forth on Schedule A hereto [including LBH plc], each of which shall be a Guaranteed Subsidiary.” Accordingly, all obligations of LBH plc, including under the LBH plc Guarantee issued in connection with the Securities, are fully guaranteed and payable by LBHI.

### **RESPONSE**

6. Under Bankruptcy Rule 3001(f), “[a] proof of claim executed and filed in accordance with [the Bankruptcy] rules shall constitute prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f); *see also In re DJK Residential LLC*, 416 B.R. 100, 104 (Bankr. S.D.N.Y. 2009). Upon the Debtors’ objection to a claim, the “burden of going forward then shifts to the objector to produce evidence sufficient to negate the *prima facie* validity of the filed claim. . . . [T]he objector must produce evidence which, if believed, would refute at least one of the allegations that is essential to the claim’s legal sufficiency.” *In re Spiegel, Inc.*, No. 03-11540 (BRL), 2007 WL 2456626, at \*15 n.6 (Bankr. S.D.N.Y. 2007) (quoting *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173-74 (3d Cir. 1992)).

7. The Objection does not provide evidence that refutes the prima facie validity of the Claim. The Plan Administrator concedes that the Securities were guaranteed by LBH plc but asserts that LBHI has no liability with respect thereto because “neither the Trusts<sup>1</sup> nor LBH plc was a debtor in these cases.” Objection, ¶ 10. The Plan Administrator does not mention or address the Guarantee Resolution, whereby LBHI guaranteed the obligations of LBH plc, including the LBH plc Guarantee with respect to the Securities. By virtue of the Guarantee Resolution, the Securities are fully guaranteed and payable by LBHI. Accordingly, the relevant portion of Andbanc’s Proof of Claim against LBHI is enforceable and should be allowed.

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<sup>1</sup> The Objection defines the “Trusts” as Lehman Brothers UK Capital Funding L.P. and Lehman Brothers UK Capital Funding II L.P.

**CONCLUSION**

8. For the foregoing reasons, Andbanc respectfully requests that the Objection with respect to the Claim be overruled and that the Claim be allowed as filed.

**RESERVATION OF RIGHTS**

9. Andbanc reserves any and all of its rights at law and/or equity, including, without limitation, the right to discovery in connection with the Objection and to amend or supplement this Response for any reason.

Dated: January 24, 2013  
New York, New York

Respectfully Submitted,

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